

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A)No.407 of 2007

Commissioner of Income Tax
Chennai.

.. Appellant

-vs-

M/s.Chemplast Sanmar Ltd.,
9, Cathedral Road, Chennai.

... Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 13.10.2006 in ITA No.2343/Mds/2004 for the assessment year 1996-97 against the order of the Commissioner of Income Tax(A)III Chennai dated 23/7/04 in ITA.No.96/2002-03/A-III against the Assesment order of the Deputy Commissioner of Income Tax Company Circle I (3) Chennai dated 21/3/02 in PAN/GIR No.AAACC3000F respectively.

For Appellant : Mr.J.Narayanaswamy

J U D G M E N T

(Delivered by P.D. DINAKARAN, J.)

The revenue has preferred the above tax case appeal against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 13.10.2006 in ITA No.2343/Mds/2004, raising the substantial question of law as to whether the Tribunal was right in allowing depreciation on "Chlorine Containers" claimed by the assessee at 100% wherein the rule specifically states that 100% depreciation is available only on "Gas cylinders including valves and regulators", under the following facts and circumstances of the case.

2. The relevant assessment year is 1996-97. The assessee company is engaged in the manufacture and sale of chemicals. Even though the assessment for the year 1996-97 was completed on 18.3.1999, the same was re-opened by issuing notice under section 148 of the Income-tax Act.

During the re-assessment, the Assessing Officer disallowed the depreciation on Chlorine containers claimed by the assessee at 100% and treated these containers as normal plant and machinery and allowed depreciation only at 25%, while the assessee claimed 100% depreciation placing reliance on Item III (3) (v) of Appendix-I read with Rule 5 of the Income-tax Rules, relating to the rates at which depreciation is admissible, which reads as hereunder:-

APPENDIX I
(See rule 5)

TABLE OF RATES AT WHICH DEPRECIATION IS ADMISSIBLE

Block of assets	Depreciation allowance as percentage of written down value
PART A	
TANGIBLE ASSETS	
I. BUILDINGS	
...	
II. FURNITURE AND FITTINGS	
...	
III. MACHINERY AND PLANT	
(1) ...	
(2) ...	
(3) (i) ...	
(ii) ...	
(iii) ...	
(iv) ...	
(v) Gas cylinders including valves and regulators	100
....	

3. Concededly, the gas cylinders for which the assessee seeks 100% depreciation is a tangible asset, which comes under the list of assets in Category A. But, what is agitated by the Revenue is that the gas cylinders, for which depreciation is claimed by the assessee is only machinery and plant, which do not fall under 3(v) as the asset in question is only a container and not a gas cylinder. On the other hand, it is the case of the assessee that the asset in question for which 100% depreciation is claimed is nothing but a gas cylinder including valves and

regulators, for which 100% depreciation is allowable. Rejecting the contention of the assessee, the Assessing Officer allowed depreciation only at 25% treating the asset in question as a normal machinery and plant and not as a gas cylinder including valves and regulators, by his assessment order dated 21.3.2002.

4. Against which, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals), who by order dated 23.7.2004 confirmed the order of the assessing officer, which necessitated the assessee to prefer a further appeal before the Income-tax Appellate Tribunal, which, following a decision of the Delhi High Court in Commissioner of Income-tax vs. Goyal MG Gases Ltd., reported in (2006) 201 CTR 342, allowed the appeal and granted 100% depreciation. Hence, the above appeal.

5. Concededly, there is no dispute with regard to the following material facts:-

- (i) that the assessee is a manufacturer and seller of chemicals;
- (ii) that the assessee claimed depreciation of 100% for the larger containers for transporting chlorine, a gas, under the category of gas cylinders including valves and regulators; and
- (iii) that the asset in question has valves and regulators.

6. The case of the Revenue is that the gas cylinders including valves and regulators, which are entitled to 100% depreciation as tangible asset under Part-A Item III (3)(v) read with Rule 5 of the Income-tax Rules, shall not include the containers, which are larger in size. But, unfortunately we are unable to appreciate the stand taken by the Revenue, as Item III (3)(v) of Appendix-I of the Rules is not subject to any other qualification as to the size of the cylinder. On the other hand, the asset in question is manufactured as a cylinder as specified under the Gas Cylinder Rules, 2004, whereunder the gas cylinder includes container. Since the asset in question also contains valves and regulators, we do not see any reason for not considering them as gas cylinders that are entitled to 100% depreciation. In any event, unless the legislature prescribes and imposes any qualification as to the size of the gas cylinders that are entitled to 100% depreciation, even though they possess valves and regulators for their entitlement to 100% depreciation, it may not be proper for this Court to import such qualifications to deny the benefits conferred under Item III (3)(v) of Appendix-I of the Rules, as it is a settled law that the statute should be read as it is without distorting or twisting its language.

7.1. In a case where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom; and it is well known that the Court can iron out the creases but it cannot change the texture of the fabric, cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous, cannot add or subtract words to a statute or read something into it which is not there and cannot rewrite or recast legislation, vide *NASIRUDDIN v. SITA RAM AGARWAL* [2003] 2 SCC 577.

7.2. There should be a literal rule of interpretation of a statute, which is the first and foremost principle of interpretation and where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule and even if the literal interpretation results in hardship or inconvenience, it has to be followed. The language employed in a statute is the determinative factor of the legislative event and even assuming there is a defect or any omission in the words used in the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result and any departure from the literal rule would really be amending the law in the garb of interpretation, which is not permissible and which would be destructive of judicial discipline, vide *RAGHUNATH RAI BAREJA v. PUNJAB NATIONAL BANK* [2007] 2 SCC 230.

8. The above view of ours is also supported by the decision of the Delhi High Court in *Commissioner of Income-tax vs. Goyal MG Gases Ltd.*, reported in (2006) 201 CTR 342, which the Appellate Tribunal has relied upon. In the case before the Delhi High Court, the contention of the assessee therein was that the containers/tankers were nothing but big cylinders as they had all the attributes of a cylinder, which was rejected by the Revenue on the ground that since the so-called cylinders were merely containers and were mounted on trucks, the assessee therein was entitled to depreciation at the rate of 25 percent as eligible to "plants and machineries". While deciding the issue whether the item claimed by the assessee therein is gas cylinders or machinery, the Division Bench has found that there is no dispute that the item in question was gas cylinder, though no doubt a big one and that the expression 'gas cylinders' used in Appendix I to the IT Rules does not mention the size of the gas cylinders nor does it say that gas cylinders should be only for cooking purpose or for any other particular purpose and any interpretation of the expression 'gas cylinders' to mean 'cooking gas cylinder', would be really adding words to the statute which is not permissible. Accordingly, the Division Bench of the Delhi High Court held that gas cylinders are entitled to depreciation at 100 per cent.

For all these reasons, we find no substantial question of law that arises for our consideration in this appeal. Accordingly, the tax case appeal is dismissed.

sra

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Bench "A", Chennai.

2.The Secretary, Central Board
of Direct Taxes, New Delhi.

3.The Commissioner of Income Tax
(Appeals), Chennai.

4.The Deputy Commissioner
of Income-tax, Company Circle-I(3),
Chennai.

5.The Asst. Registrar,
The Income Tax Appeal Tribunal,
Rajaji Bhavan,
3rd Floor, Besant Nagar,
Madras-600 090.

+1 cc to M/s.Pushya Sitaraman, Advocate Sr.No.31669.

NSM(co)
DCP/14.6.07

T.C.(A).No.407 of 2007

WEB COPY